CHILD MARRIAGES IN INDIA: A SOCIO-LEGAL STUDY WITH SPECIAL REFERENCE TO THE STATE OF RAJASTHAN

Ph.D. SYNOPSIS

SUPERVISOR
Dr. ALOK KUMAR

SUBMITTED BY
SHRADHA SANJEEV
9020181904

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1. INTRODUCTION:

> *"I am one of those unfortunate women whose hard lot is to suffer the unnamable miseries entailed by the custom of early marriage. This wicked practice of child marriage has destroyed the happiness of my life. It comes between me and the things which I prize above all others — study and mental cultivation. Without the least fault of mine, I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked down upon with suspicion and is interpreted in the most uncharitable manner."*[1]

Even today these words of Rukhmabai echoes in the heart of many young girls. Child marriage is a series of violation of human rights. This practice has claimed many young girls' lives each year. In the world many girls are married in very young age, even before reaching the age of puberty and many times before reaching the eighteen years of age.

The issue of child marriage has been debated for more than a century in India but has never been considered as a serious threat to the life of young children especially the young girls. In India child marriage is an offence since 1929 under Child Marriage Restraint Act but once the marriage gets solemnized it remained valid and legal. But by the Prohibition of Child Marriage Act, 2006 the legislature has made child marriage voidable and in specific cases void but generally they are not declared as void. This legal scenario and the determinants of child marriage has been the cause of concern even more when the young children's human and natural rights especially their rights to dignified life are kept in mind.

1.1 MARRIAGE: A KEY EVENT IN ONE'S LIFE

[1] Extract from letter of Rukhmabai who was a victim of child marriage.

Birth, marriage and death are the key trio events in most people's lives but only marriage is the one key which is done as a matter of choice as it is perceived as a formalized and binding relationship between the two adults who consented for the same and which sanctions sexual relations and provides legitimacy to the offspring.[2]The right to exercise this choice i.e. marriage was recognized and established in various instruments of International human rights.[3] Yet, many girls and boys also though smaller in number enter in marriage without getting any chance to exercise their right to choose. Some of them are forced in marriage at very young age, who are too young to make the decisions regarding their marriage or understand about the implications of marriage. Some of them may have given which can be considered as consent in the eyes of custom or law but such consent was in reality made by the others on their behalf. The age of marriage is prescribed under the law but still child marriage or early marriage is widely practiced in India.

1.2. **CHILD MARRIAGE:**

Child marriage is also known as early marriage which can be defined as, "any marriage solemnized between parties who are below the age of majority, before the girl or boy is psychologically or physiologically ready to shoulder the responsibilities which comes up with marriage." In some societies of developing countries early marriage is used to strengthen or build the alliances between the families. Sometimes young children or babies go through the ceremony of betrothal.

Child marriage has profound physical, psychological, emotional and intellectual impacts upon the parties who go through the same, it also cuts off the parties from the chances of personal growth and educational opportunities. In the case of girls it also includes early pregnancy and child bearing and many times it leads to domestic and sexual subservience for their life on which they don't have any control.

[2] Maggie Black, Early Marriage, Child Spouces, UNICEF, Innocenti Research Centre, Digest No. , 10 (2001)
[3] International Covenant on Civil and Political Rights (1966), Convention on Elimination of Discrimination Against Women (1979), Convention on Rights of Child (1989)

Child marriage has been defined differently in various countries as the minimum age required for marriage is not uniform. Law of many countries provides that the minimum age for marriage is eighteen years for both girls and boys. Few countries allow marriage above the age of sixteen years and below the age of eighteen years. Islamic law allows marriage after the fifteen years of age i.e. after attaining puberty. In New Zealand the minimum age required for marriage is eighteen years and parties who are of 16 or 17 years of age, they can only marry with the consent of the Judge.[4]In UK marriage between the parties who are below sixteen years of age is void.[5] In Egypt the minimum age of marriage for girls is sixteen years whereas for boys it is eighteen years.[6] In Pakistan the minimum age required for marriage in case of girls is 16 years and for boys it is 18 years and consent of both is required before the marriage.[7]In Indonesia the age required for marriage is 16 for the girls and 18 for boys.[8] These are the provisions regarding the age of marriage in various countries. In various conventions and laws also age of majority is not defined uniformly.

1.3 CHILD MARRIAGE IN INDIA:

In India, child marriage means a marriage where either of the party is a child i.e. girl is below the age of 18 years or boy is below the age of 21 years. Marriage is formalized relationship with the legal standing between the male and female where sexual relations are legitimized. In such relationships it is expected that parties have consented for the same. How someone can be a party of marriage if they are not able to understand the nature and consequence of the same? How they can comply with the responsibilities which are followed by marriage when they are unaware of the same? Is it correct to use the term 'child marriage'?[9]

The terms child marriage i.e. marriage below 18 years of age is used here for many reasons, the first being to emphasize the paradox in the prevalent practice of marrying young girls. Second,

[4] Marriage Act, 1955, http://www.legislation.govt.nz/act/public/1955/0092/latest/whole.html (visited on 25th August 2019)
[5] Marriage Act, 1949, http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/76/section/3 (visited on 25th August, 2019)
[6] https://www.hrw.org/reports/2004/egypt1204/3.htm (accessed on 25th August 2019)
[7] https://www.girlsnotbrides.org/child-marriage/pakistan/
[8] https://www.girlsnotbrides.org/child-marriage/indonesia/
[9] Jaya Sagade, Child Marriage in India: Socio-legal and Human Right Dimensions,

Indian legislators, social workers, and law professionals refer to this practice by the expression 'child marriage'.' Third a girl below 18 years of age is treated as a child for the purpose of marriage under Child Marriage Restraint Act, 1929.[10]The Indian Majority Act, 185 also defines the age of majority as 18 years for the purpose of civil matter.[11] Even the Constitution of India gives the right to vote to a person who is 18 years of age.[12]So is the case while entering into a valid contract under the Indian Contract Act, 1872. Therefore in the Indian Context, child marriage is the proper expression. The UN Convention on the Rights of Child also defines child as a person who is below the age of 18 years.

Other terms used by international community for the purpose of child marriage is early marriage or forced marriage. These terms have some limitations such as term early marriage can be very subjective. Early in comparison to what and for whom are the basic questions that could have different answers in different contexts. Early marriage is also being defined as marriage of girl before adolescence. In developing countries like India rarely there is a stage of carefree adolescence in girls' life as many times they are forced to step from childhood into womanhood directly.

All child marriages are forced marriage but all forced marriages are not child marriage. The force implies that there is use of power against the wish of an individual and it is against the free will of the person. In the case of child marriage there is no question of consent as the girl child is incapable of giving valid legal consent due to her physical and mental growth and even is she is able to express her wish then either she is not allowed to express it or is forced to act against her desires. On the other hand, even the adults can be forced to enter into marriage in a country like India where marriages are arranged by the parents as norm.

1.4. HISTORICAL PERSPECTIVE:

[10] *Ibid*

[11] Though act is not applicable in the matter of marriage, sec.3 provides that a person domiciled in India shall be deemed to have attained his majority when he completes his age of 18 years and not before. Sec. 2 provides that nothing in the act shall the capacity of any person to act in the following matters: marriage, divorce, and adoption. Thus, the provision is applicable to all civil matters except that of marriage, divorce and adoption.

[12] Art. 328 of Constitution of India

There are some notable features of marriage in India. Culturally, marriages are universal, arranged by the parents, occur at a young age and usually there is large age difference between the bride and groom. Traditionally marriage is a religious ceremony and a sacred duty rather than a matter of personal choice or convenience. Modern influences have made some impact on the institution of marriage but the basic values and norms are still unchanged. The parents and senior members of the family consider marriage of their children a serious responsibility and play a very important role in arranging the marriage in a traditional manner.

The origin of the custom of child marriage remains obscure and there is uncertainty about the time period in which this social evil manifested itself initially.

i) Vedic Period:

During this period marriage was performed only when the couple reached a mature age. The explanation to this is marked by the emphasis on progeny and procreation of strong children and the child bride cannot be a suitable mother.[13]Amongst the four Vedas only two i.e. the Rigveda and Atharvaveda contains the marriage hymns. Under Rigveda marriage is considered as sacrament. Though there are no clear cut provisions regarding the age of marriage, Atharvaveda[14] says that when a bride is fine looking and well adorned, she by herself seeks her friend from among the men. That shows that girls were grown enough to select their husbands. Sharma, who wrote in 1993, argues that during the time of the great epics, the Ramayana and Mahabharata, the girls used to be grown up at the time of marriage.[15]

ii) Child Marriage from the 6th Century AD – 1400 AD

After the 6th century the age of marriage for girls went down lower and lower. The stoppage of participation of girls in Vedic education, Upanayana rituals and the insistence of purity in yajna i.e. sacrifice ritual contributed to the lowering of age of marriage. In the Smriti period i.e. 500 – 1000AD, 8-10 years of age, was considered appropriate for girls to get married.[16]There was a

[13] W. F. Menski, Hindu Law: Beyond Tradition and Modernity, P. 327 (Oxford 2008)
[14] Atharvaveda (1-17-1) cited by P. V. Kane, Dharmashastra
[15] M.R. Sharma, Marriage in Ancient India (Agam Kala Prakashan, 1993)
[16] P. V. Kane, History of Dharmashastra 526 (1941)

belief that the parents of a girl who remains unmarried after attaining puberty go to hell. Later the Manusmriti placed stress on suitability of the groom and made it clear that marriage of a girl before her first menstruation was permissible. Under the uncodified Hindu Law, as per Mitakshara, the capacity to marry was attained on the completion of sixteen year of age and as per Dayabhaga, the age was fifteen year in case of girls.[17]

iii) Muslim Period:

Invasion of outsiders made the local population change their marriage customs to safeguard chastity. In this period the concept of progeny and the procreation of strong children were replaced by concept of protection of chastity. [18] During Muslim invasion, custom of child marriage was strengthened. Since raids and warfare became common occurrence, the fear of insecurity was largely responsible for the emergence of the system of early marriage as it was conceived that the married women were less prone to capture by invaders.[19]

One more factor influencing the age of marriage was that the perceived notion of a woman as incapable or unworthy of independence. At every stage in her life she should be under the dominion of someone, her father, her husband or her son. The idea of marriage was also the transfer of father's dominion over her in favour of her husband and this transference should take place before she reached the age when she might question it. There was also a fear of increasing sexual immorality if a woman did not marry at an early age. Thus, with the religious and societal sanction, child marriage spread much faster and took deeper roots, and with the passing of time the practice became so compelling that a departure from it was a matter of strong social disapproval.

iv) Modern Period:

For better understanding and convenience the modern period is divided into two phases, namely:
a) Pre- independence Period b) Post- independence Period

[17] Mayne's Hindu law and Usage, revised by Alladi Kuppuswami 186 (14th Ed. 1996)
[18] W. F. Menski, Hindu Law: Beyond Tradition and Modernity, P. 327 (Oxford 2008)
[19] Government of India, Report of Age of Consent Committee 92 (1929)

a) Pre – independence Period:

For the first time in the early part of 19th century, the move was initiated against child marriage by social reformist – Raja Ram Mohan Roy. By considering the ill effects of early marriage, another reformist, Ishwarchandra Vidyasagar agitated for girl's marriage at a rational age. The main problem arising out of child marriage especially in case of girls was the pitiable conditions of child widows. They were compelled to remain secluded from the world and remarriage of widows was not permitted. This was not only the case of Hindus but was throughout India among Muslims, Christians and Parsis also.

In 1848, the Law Commission was persuaded to make intercourse between husband and wife, below a given age, an offence. Accordingly a provision was inserted in the Indian Penal Code, 1860 which declared consummation when the wife was below 10 year of age[20] as rape and prescribed punishment extending to transportation for life. In 1872 the British government came up with first relevant legislation to control child marriage i.e. the Special Marriage Act or Civil Marriage Act, 1872. However, because it is hardly used by anyone, the problem of child marriage was not affected by this legislation. After the notorious case of ***Queen*** v. **Haree *Mohan Mythee*** [21] the movement against child marriage picked up its velocity. A social reformer ***Behramji M. Malabari*** led the reform movement further. And by his efforts, in 1891 the age of consent to sexual intercourse was raised from 10 years to 12 years.

In 1921, for the first time the problem of child marriage was posed before the British Government with the help of census report.[22] But the Government refused to make any law on the ground of prevailing social conditions and due to strong opposition made by many States. At the end of the last century, public attention was directed against the prevalence of this social evil. As a consequence thereof, in 1927 **Dr**. ***Hari Singh Gour*** had introduced a Bill to raise the age of consent to 14 year. The **Sarda Bill** finally culminated into Child Marriage Restraint Act, 1929, which came into force on 1st April, 1930.

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[20] In 1891 it was raised to 12 which was further raised in 1925 to 13

[21] ILR 1891 Cal. 49

[22] T. Mahmood, "Marriage Age in India and Abroad", 22 JILI (1980), P. 40-41

Sarda Act or Child Marriage Restraint Act, 1929:

The Act purports to restrain the solemnization of marriage between two individuals when they are below the age limit. Initially the age limit was 14 years for girls and 18 years for boys. The age limit was raised to 15 year by an amendment to the Act in 1949. The age limit for boys and girls were further raised to 21 years and 18 years respectively by an amendment in 1978.

The enactment of said Act was a welcomed step to curb child marriage. Though it didn't addressed the pathetic question pertaining to the validity of child marriage, but the penal provisions which the said Act provides, is certainly a forward step towards elimination of child marriage.

(II) Post-independence Period

The preceding period prior to independence saw the social uproar appertaining to social evils especially the child marriage. Preceding various legislative enactments proved ineffective in rooting out this social problem necessitated the Government to enact special Act keeping in view the lacunae existing previously. Resultantly Government came with following Acts:

Prohibition of Child Marriage Act, 2006:

Then in 2006, an improvement over Child Marriage Restraint Act, 1929 has been introduced to prevent child marriage through Prohibition of Child Marriage Act, 2006. The recent improvement certainly has more severe punishment as it provides punishment for male adult marrying a child with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees. The parents and guardians are also liable for same punishment where a child contracts a child marriage. The Act also makes the child marriage voidable at the option of the contracting parties, and it also makes the same void in certain circumstances.

Under the *Hindu Marriage Act, 1955*, *Parsi Marriage and Divorce* Act, 1936, and *Christian Marriage Act, 1872*, the minimum age of marriage for girls is 18 years and for boys the age is 21 years. Under the **Special Marriage Act, 1954**, the child marriage is void. Under the Hindu Law child marriage is not void. **Muslim Law** lays down that a person who has not attained the age of puberty has no capacity to marry without the consent of his guardian for marriage.

Due to socio-legal nature of child marriage and social structure of the country, its prevention is

going with slow speed. Legislative enactment viz. Prohibition of Child Marriage Act, 2006 is certainly very helpful in its elimination from India. However, the validity of the child marriage remains as before, by the introduction of the Act of 2006.

Main Features of the Prohibition of Child Marriage Act, 2006

The new Prohibition of Child Marriage Act, 2006 (hereafter PCMA) brings about far reaching changes in the law as under:-

- Section 3 of this Act states that "child marriages shall be voidable at the option of the contracting party who was a child at the time of the marriage." It allows for a petition to be filed declaring the marriage void within 2 years of the child attaining majority. However, since a girl is supposed to attain majority at the age of 18 and a boy at the age of 21, the girl can file a petition till she becomes 20 years of age and a boy till he becomes 23 years of age.

- The Act also allows for maintenance and residence for the girl till her remarriage from the male contracting party or his parents.

- It further allows for appropriate orders for custody for any child born from the marriage.

- All the punishments for contracting a child marriage have been enhanced. The punishment for a male over 18 years of age has been enhanced to rigorous imprisonment of up to 2 years or with fine upto 1 lakh rupees or both.

- A similar punishment is prescribed for anyone who performs, conducts, directs or abets any child marriage.

- The same punishment is also prescribed for anyone who solemnizes a child marriage including by promoting such a marriage, permitting it to be solemnized or negligently failing to prevent the marriage. No woman can however be punished with imprisonment. The Act also makes all offences cognizable and non-bailable.

- The Act further allows for injunctions to prohibit child marriages including *ex parte* interim injunctions. It states that any child marriage solemnized in contravention of an injunction order will be void.

The Act lays emphasis on the prohibition of child marriages by providing for the appointment of Child Marriage Prohibition Officers by the State Governments and gives powers to these Officers to prevent and prosecute solemnization of child marriages and to create awareness on the issue. However without the required financial allocations these Officers will probably not get appointed. The Act gives the District Magistrate powers to stop and prevent solemnization of mass child marriages by employing appropriate measures and minimum police force apart from giving him all the powers of the Child Marriage Prohibition Officer.

In view of the provisions of PCMA we have to examine whether any further amendments to the law of child marriage are necessary. The present law while making child marriage voidable under a gender neutral provision has also given a male child the right to get out of a forced marriage. The law, however, does not make a marriage invalid whether it is performed when the child is an infant or later at puberty or adolescence. Under the criminal law, however, Section 375 IPC makes it a crime to have a sexual relationship with a child less than 15 years of age. A contradiction therefore remains between the PCMA and Section 375 IPC. It is relevant to mention that prior to the new Act a Parliamentary Standing Committee had examined the government Bill on the Prevention of Child Marriage and suggested that child marriages solemnized after the introduction of the new Act should be made void *ab initio*. The Standing Committee had pointed out that research had shown that a girl child "has to suffer irreparable losses due to biological factors and inability to sustain pressure of marriage at an early age."[23]

Report card of the PCMA-2006

According to National Crime Records Bureau 2016 report, a total 327 cases under P.C.M.A-2006 were reported in the country; out of which highest were reported in Tamil Nadu (55), followed by Karnataka (51), West Bengal (41),Assam (23), Telangana (19) and Andhra Pradesh (19). Few such cases were also reported from Uttar Pradesh, Madhya Pradesh, Rajasthan and Jharkhand.

[23] Rajya Sabha, Thirteenth Report on the Prevention of Child Marriage Bill, 2004, New Delhi, November 2005, Para 10.4

The proposed research will take account of the effectiveness, implementation and success of the Prohibition of Child Marriage act, 2006 as per its mandate and in light of the data collected during the Census of 2011.

Shortcomings of the PCMA 2006

The offence under the Act has been made voidable, not void except in certain conditions.

Undue advantage to males/ boys to move petition in the court for annulment of marriage.

No major or minor punishment has been provided in the Act for minors.

Like Christian Marriage Act- 1872, a uniform age of marriage for boys and girls has not been provided under the Act.

Nothing has been provided regarding the registration of child marriages in case it is valid / voidable.

No strict responsibility has been given on the State machinery to protect the child marriages and no punishment has been provided in case they failed to do their job.

Child marriage is a social phenomenon which can't be tackled by legislative intervention alone. What is required is a change in mindset and advocacy with a focus on the evil effects of the practice of child marriage.

Amendment in Hindu Marriage Act- 1955 [Act 6 of 2007]

In response to the Prohibition of Child Marriage Act- 2006, the Hindu Marriage Act was accordingly amended as-

Amendment in Section 18 – In the Hindu Marriage Act, 1955, in Section, for clause (a) the following clause shall be substituted, namely:-

> **"**(a) in case of a contravention of the condition specified in clause (iii) of Section 5, with rigorous imprisonment which may extend to two years, or with fine which may extend to one lakh rupees, or with both."

Child Marriage: The Demographic Context

Child marriages are still not uncommon in India. Child marriages continue to be a fairly widespread social evil in India. In a study carried out between the years 1998 to 1999 on women aged 15-19 it was found that 33.8% were currently married or in a union.[24] In 2000 the UN Population Division recorded that 9.5% of boys and 35.7 % of girls aged between 15 to19 were married. [25] This showed that child marriage was far more prevalent amongst girls and this highlighted the gender dimension of the problem. The National Family Health Survey of 2015-2016 (NFHS-4) carried out in twenty-nine states confirmed that 47.4% of women currently aged 20-24 years were married before the age of eighteen years.

2. STATEMENT OF THE PROBLEM

The problem of child marriage is very complex in nature and it consequences are very adverse to the society. Its complexity lies in the historical moorings, traditional religious practices and some other social problems like dowry and child-widowhood. Over and above, it is not only health hazard for young mothers but it has also adversely affected the national population policy of the government. History has witnessed several movements against child marriage. But none of them succeeded in its total abolition. It is still prevalent but in a sporadic form. Today the situation is not only serious rather alarming but still it has not been taken seriously by the society, law makers and executive. In modern society, it is considered as an evil and its solution is yet to be evolved.

The problem of child marriage has been a great concern for demographers because it is directly linked with the high fertility rate. Despite the legislative and administrative measures taken by the Central and State governments, the problem of child marriage still persists. The processes of urbanization and industrialization have accelerated the rate of social change but without any significant reduction in child marriages.

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[24] The Demographic and Health Survey (DHS) figures retrieved from UNICEF based website, <www.childinfo.org/areas/childmarriage/>, visited on February 2013

[25] 3 UN Population Divisions (2000). World Marriage Patterns, Department of Economic and Social Affairs, Washington, <www.un.org/esa/population/publications/worldmarriage/worldmarriage.htm>, visited on February 2013

The repercussions of child marriage are more serious for the girls than for the boys. It leads towards inadequate socialization, discontinuation of education, physiological and psychological damage to girls due to early and frequent pregnancies and quite often an early widowhood. This is quite evident from the first Bill introduced in 1927 which is known as Hindu Child Marriage Act, 1927. The object of the Act was twofold

The first object of the Act was to put a stop to child widowhood and accordingly the marriage of girls below the age of 12 years was declared invalid.

The second object of the Act was to prevent, as far as possible, girls, physical and mental deterioration by removing a principal obstacle to their physical and mental development. Since then many more Acts and Laws have been passed to stop the child marriage. Even after these preventive measures practice of child marriage in the country in general, particularly in the states of Madhya Pradesh, Uttar Pradesh, Andhra Pradesh, Rajasthan, and Haryana. Based on the 2015-2016 NFHS IV, 44.5 % of young women currently aged 20-24 years in India married by age 18. The percentage of women aged 20-24, married by the time they are 18, stood at 69% in Bihar followed by 65.2 % in Rajasthan, 63.2% in Jharkhand, 58.6% in UP, and 55% in MP and West Bengal. The NFHS-4 findings further revealed that 16% of women aged 15-19 were already mothers or pregnant at the time of the survey. The NFHS-4 findings show a slight rise in the median age of marriage for women aged 20-49 from 32.3[26] in NFHS-3 to 16.7. However, this data does not reveal how many marriages are taking place even below the age of 15.

The above mentioned facts and figure show that even after 73 years of independence, the instances of Child marriage in India is quite rampant[27]. Child marriage manifests itself as a grave social evil which not only infringes upon the rights of the child cherished and provided for in the various UN instruments [28] but also violates the constitutional commitment contained in the Directive Principle embodied in Article 39 (f) that the state shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in

[26] National Family Health Survey of 2015-16 (NFHS-4), <www.nfhsindia.org/data/india/indfctsm.pdf>

[27] NFHS IV 2015-2016

[28] Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), Convention on Elimination of Discrimination Against Women, 1979, Convention on Rights of the Child, 1989

condition of freedom and dignity.

3. LITERATURE REVIEW:

The problem of child marriage is much complex and is interconnected with socio-cultural context. The issue of child marriage is more complex in as it is connected with religious and traditional practices and also with other social issues such as child widowhood and dowry.

In Child Marriage the human right of the girl is violated still it is widespread in the world. Many other issues also come up with the practice of child marriage such as deepening of poverty and the health risk which is associated with pregnancy in adolescence and generally it extends to the next generation. Child Marriage does not only affect the girl but also the next generations as other problems are connected with the child marriage. (Dependant, deprived: Child Brides in India Tell Their Stories, United Nations Population Fund)

The young brides experience exposure to the sexual activity at very young age which increases the chance of early pregnancy which has serious consequences on maternal and the reproductive health of the girl and also the health of the child. The girls who get married before the age of majority generally don't complete their education due to which their educational opportunity ends and as result their economic potential gets limited. Child marriage is also highly connected with domestic and sexual violence because the girls who become child bride are more likely to be abused. (Gayle Tzemach Lemmon and Lynn S. Elharake, Child Bride- Global Consequences, 2014)

Child marriage happens when one or both the parties of marriage are below the age of majority. It is a violation of Universal Declaration of Human Rights where under Article 16(2) it has been stated that "marriage shall be entered into only with the free and full consent of the intending spouses." In Convention on Elimination of all Forms of Discrimination Against Women it has been stated under Article 16 that women should have the same right as men to "freely choose a spouse and to enter into marriage only with their free and full consent." Any deviation from these obligations which are enshrined in these conventions is a case of human right violation. (Marrying Too Young: End Child Marriage, United Nations Population Fund)

Child marriage systematically engraves subjugation and exploitation in the society. It is an exploitation tool which is used to suppress the persons who belong to weaker sections of the society. Child marriage results in placing the child's right in severe peril especially the rights of girl child. The apparent consequences of these issues are the effect on the health especially reproductive and sexual health. Child marriage also harms other personal and social rights such as education, sexual and other forms of exploitation and buying and selling of children. (Aparna Bhat, Aatreyee Sen and Uma Pradhan, Child Marriages and the Law in India, Human Rights Law Network, 2005)

The Constitution of India vide Chapter- IV strives to protect the tender age of children and that childhood and youth are protected against exploitation and against moral and material abandonment. For both girls and boys, child marriage has profound physical, intellectual, psychological and emotional impacts, cutting off educational opportunity and chances of personal growth. For girls, in addition, it will almost certainly mean premature pregnancy and childbearing, and is likely to lead to a lifetime of domestic and sexual subservience over which they have no control. However, it is very woeful to note that the due importance to the problem of child marriages is not being given at Government or Society level despite the fact that the problem is still looming large in the 21st century at National and International scenario. The State machinery and higher courts are trying their best to acknowledge the repercussions of this problem on the society but hitherto failed in sensitizing the society at large on this issue. Therefore, some concrete and definite steps are required to be taken at all level of administration, governance and policy making to curb the menace of child marriages.

Since Policy making, Law making and its implementation are the vital tools in controlling the problem of child marriages; the State Institutions, Governments, legislative bodies, higher courts, NGOs, International Organizations, Civil society are shouldering their responsibility side by side with the society at large. Central Government, State Governments have launched or launching their policies to provide social security to the public e.g. policies for alleviation of poverty, policies for public health, policies for education, policies for food security, policies for protection to youth and children, policies regarding marriages and divorce, policies for employment,

policies regarding treatment to youthful offenders etc. which have vital importance for the topic. Certain schemes like MGNREGA, KANYA VIDYA DHAN YOJNA, LADLI YOJNA, and BICYCLE SCHEME FOR SCHOOL GOING GIRLS/CHILDREN etc. are morale boosters for the affected groups. These policies/ schemes are required to be investigated regarding their positive effects on the topic and their lacunae, if any.

On legislative side the Indian Penal Code 1960 read with its latest amendments in 2013, Immoral Traffic Act of 1956, Hindu Marriage Act of 1955, Special criminal Acts like Protection of Children from Sexual Offences (POCSO) Act of 2012, Domestic Violence Act of 2005, Juvenile Justice Act of 2000, Right to Information Act of 2005, Child Labour (Prohibition) Act of 1986, Protection of Child Marriage Act of 2006, Whistle Blowers Act (pending), Witness Protection Scheme / Act (pending) are step forward in protection of child marriages. These Acts are required to be analyzed while discussing on the topic. Besides the above, The Convention on the Rights of the Child of 1989, United Nations Millennium Declaration Goal of 2000 (Adopted by General Assembly) are also relevant on the topic.

Certain reports like National Family Health Survey (NFHS-IV) reports-2015-16, 205th Law Commission Report, United Nations Population Fund reports, UNICEF's State of the World Children reports, National Plan of Action for Children reports - 2016, Children in India-2018 (report published by Ministry of Statistics & Programme Implementation, Govt. of India etc. have high bearing on the topic and the same may be analyzed or supplemented while discussing on the topic.

Indian Courts also share big responsibility in implementing the law on child marriages and shaping the future of children in India. The Supreme Court of India and High Courts have raised its concern on rampant child marriages in India, time and again passed guidelines regarding the topic and passed judgments /Orders directing the authorities for strict adherence of laws on the topic. In **Delhi Women Commission v. Union of India (2006)** the Supreme Court had requested the Law Commission to prepare measures to further improve the PCMA-2006. **In Seema v. Aswini Kumar (2006)** the Apex court had made the registration of marriages compulsory. Supreme Court has also taken a strong view while deciding the case in **Amarinder Kaur & Anr. v. State of Punjab, decided on November 27,2009** and had declared the marriage between a minor girl of 16 yrs and boy of 20 yrs.(run away couple case) void. However the higher courts

in India have taken conflicting view while deciding the child marriage as void or voidable. The concerns of the higher courts and its judgments /orders would also form parts of the proposed research.

Thus the proposed research topic is enriched with abundant doctrinal and non doctrinal literature ranging from the past to present. The proposed topic will also cover the policy/ legislative initiatives taken by many countries and the new dimensions emerging out from these initiatives at national and International level. The researcher proposes to delve into the more available literature and come out with a synthesized form of opinion upon the problem of the research work.

4. AIM & OBJECTIVE OF STUDY:

The problem of child marriage is very complex in nature. Demographers, social reformists, legal and administrative experts have taken keen interest in it, yet the problem continues.

Through this research, researcher will try to analyze social, legal and human rights dimensions of the problem of young boys and girls, getting married during their formative years when they are too tender to bear the burden of the wedlock from the socio-legal perspective. The research will highlight the magnitude and the probable causes of the problem of child marriage prevalent in the state of Rajasthan and Uttar Pradesh through empirical study.

Keeping in view having holistic approach which is required to understand the problem of child marriages, the present study will be focusing on the following main objectives.

a. To identify differential patterns of Child Marriage in State of Rajasthan and Uttar Pradesh dependent upon various socio-economic factors;
b. To find out the factors responsible for prevalence of child marriage in certain groups as compared to other groups;
c. To study the trends in the age at marriage;
d. To identify dominant aspects in child marriages;

e. To access the impact of legislative measures on the prevalence of child marriage practices.

f. To find out the role / impact of the local institutions like the caste / village Panchayat and law enforcement agencies on the issue of child marriage.

5. HYPOTHESIS

By making stand on the materials / literature available hitherto on the topic and in view of the above objectives on the proposed research paper, the researcher wishes to draw up the following hypothesis.

1. Lower the economic status of the family, higher will be the incidence of child marriage;

2. Lower the education level of parents higher will be the incidence of child marriage; and

3. Child Marriage Legislations are adequately prohibiting cases of child marriages in India.

6. RESEARCH METHODOLOGY

Selection of Study Area:

Though, due to influence of modernization and urbanization, the mean age of marriage is rising, but the incidence of child marriage has not still abated to an extent in the case of State of Rajasthan which has been witnessed at all India level. The report says[29] that 47.4% of younger women age 20-24 marry before reaching minimum legal age. Report further says that 32.3% younger men age 25-29 marry before reaching minimum legal age. Side by side the researcher will also study the incidence of child marriages in Uttar Pradesh which is lowest among Indian States and make a differential study in the dominant factors of child marriages prevalent in Rajasthan and Uttar Pradesh.

In order to make the study of the problem of child marriage broad based, it is indispensable to conduct field studies. The importance of social science techniques in the sphere of law has been well recognized. Empirical research has found favour with legal scholars and the relevance of

[29] NFHS.IV 2015-2016

such techniques have been stressed by eminent scholars and few studies of great importance have been conducted.[30] Empirical studies are imperative so as to discover the trends of marriage and effectiveness of law to control child marriage is concerned. State of Rajasthan has been selected as the study area, because it is one of the worst affected States with the cases of child marriage and Uttar Pradesh is selected as it is the home state of the researcher.

Sampling Design

The total number of Respondents in the selected villages / places for study is very large, and to interview all the Respondents of the area is not advisable keeping in view the time and money factors. Therefore, a method has to be adopted so that the sample taken is adequate, representative and manageable, also ensuring that it was not biased. Hence Respondents of each group (i.e. **affected group** i.e. children who are married before minimum legal age, their parents, general public and executive of the State) from each district will be randomly selected by using the Simple Random Sampling Method.

Tools of Research

As the information sought is of varied nature, therefore different research tools will be employed. These include viz. interview of the selected respondents, survey of documents in the library and state archives and non-participant observational method for the collection of relevant data.

(a) Interview-Schedule:

Three groups of personalities are involved in the study of the above problem. The groups are ---- - **affected group** i.e. children who are married before minimum legal age and their parents, **general public** and **executive of the state**. Therefore, four separate schedules will be made. Interview-Schedule one will be made for getting the socio-economic information about the parents of the affected children, Interview-Schedule two for the affected children, Interview- Schedule three for the general public and Interview-Schedule four will be made for getting responses from the people associated with State Administration. The schedules will be translated

[30] Jain, S.N., "Doctrinal and Non-Doctrinal Research", 1975, JILI., Vol. 17, P. 516, Saraf, D.N., "Relevance and Utility of Empirical Researchin Law", 1982, JILI, P. 611., Baxi, U., Socio-Legal Research in India: A Programmeschrift, I.C.S.S.R., 1975 (Monograph)

into Hindi/local dialects for the convenience and understanding of the respondents. There will be close ended and open ended questions.

(a) Primary data & Secondary data

This being an empirical research, data relevant for the purpose of the study is primarily to be based upon the opinion of the respondents collected by means of field survey. The research tools taken for the research will be the interview schedule. The data collected through this procedure will constitute the **primary data**.

Along with the primary data **secondary data** will be collected from archives/libraries in the form of law reports, journals, articles etc. will also be taken into consideration. As the problem of the child marriage is not only endemic in India, but many other countries of the world also face this problem, a comparative studies of the problem of the child marriage will be done, which is going to be based on secondary and tertiary sources.

(b) Observations:

The researcher will put his observation and experiences during data and response collection. This observation will also help in providing valuable inputs for the research topic.

(c) Case studies:

Case studies on child marriage will be made in the sample area. The case studies will be qualitative and help us to fill the gaps in the empirical data.

Field-work and data collection

The field-work will be done at stretch. Interview-Schedule Scheme will be adopted to collect the relevant data. For the collection of the data, the researcher will establish the rapport with some village elders and influential persons of the selected places. The village elders were instrumental in motivating the people to supply the requisite information and co-operate with researcher.

Data Processing and Analysis

The data so called will be analyzed by using social science research technique. The researcher will further incorporate the data of the Census Report – 2011 in the present work.

7. TENTATIVE CHAPTERISATION:

The study will be discussed in 7 chapters which will contain the following:

Chapter 1: Introduction

In this chapter the researcher will discuss the basic concepts of child marriage, historical perspective of child marriage, its status in Indian perspective and causes and consequences of child marriage in detail.

Chapter 2: Methodology

In this chapter the researcher will discuss the methodology used in the study, aim and objective of the study, statement of problem, hypothesis and literature review where the researcher will discuss the present literatures related to the study and the gaps in the study.

Chapter 3: Socio-economic Profile of the Respondents

In this chapter the social and economic profile of the respondents will be discussed which will include the victims, their parents, official authorities and the NGOs.

Chapter 4: Determinants of Child Marriage

In this chapter the researcher will try to determine the reasons of child marriage even after existence of laws. Here the social causes which influence child marriage will be discussed.

Chapter 5: Legal & Judicial Approach of Child Marriage in India

In this chapter the researcher will discuss the legal provisions relating to child marriage in India followed by its critical analysis. The approach of judiciary with the help of judicial precedents will also be discussed while dealing with the child marriage issues.

Chapter 6: Human Right Approach of Child Marriage

In this chapter the researcher will discuss the human right aspects of child marriage. In this chapter International Framework for Protection of women and children with respect to child marriage issue will be discussed with the help of treaties and conventions relating to women and child issues with special reference to child marriage.

Chapter 7: Conclusion and Suggestion

In this chapter the researcher will analyze the findings of research critically and will prove the research hypothesis. On the basis of findings with respect to causes and consequences of child marriage recommendations will be suggested.

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